
**LOCAL RULES OF THE UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF THE VIRGIN ISLANDS**

Rule 3.2. Mediation

(a) "Mediation" means a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is an informal and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation, decision making authority rests with the parties. The role of the mediator includes, but is not limited to, assisting the parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives.

(b)(1) *Referral By Magistrate Judge or Presiding Judge.* Except as hereinafter provided, the Magistrate Judge or Presiding Judge hereafter order any contested civil matter or selected issue to be referred to mediation. Pending promulgation of the revised Local Rules of Appellate Procedure of the District Court, Local Rule 3.2 shall also be applicable to cases in the Appellate Division.

(A) Conference or Hearing Date. Unless otherwise ordered by the court, the first mediation conference shall be held within sixty (60) days of the order of referral.

(B) Role of Counsel. Unless otherwise ordered by the court, counsel to the parties shall attend and participate in the mediation conference. The role of counsel shall be limited to general consultation pursuant, to the rules governing the attorney-client privilege.

(C) Notice. Within 10 (ten) days after the order of referral, the court or its designee, who may the mediator, shall notify the parties in writing of the date, time, and place of the conference.

(D) A mediator is authorized to change the date and time for the mediation conference, provided the conference takes place within fifteen (15) days of the date set forth in (1)(A). Any continuance of the conference beyond this fifteen- (15-) day period must be approved by the judge to whom the case is assigned.

(E) The mediation conference shall take place in a courtroom designated by the court or any other place designated by the court.

(2) *Motion to Dispense with Mediation.* A party may move, within fifteen (15) days after the order of referral, to dispense with mediation if:

(A) The issue to be considered has been previously mediated between the same parties;

(B) The issue presents a question of law only;

(C) Other good cause is shown.

(3) *Selection of Mediator.*

(A) Certification of Mediators. The court shall certify as many mediators as it determines to be necessary.

(B) Each individual certified as a mediator shall take the oath or affirmation prescribed by Title 28, U.S.C. § 453 before serving as a mediator.

(C) A list of all persons certified as mediators shall be maintained with the court.

(c)(1) The mediator has a duty to define and describe the process of mediation and its costs during an orientation session with the parties before the mediation conference begins. The orientation should include the following

(A) Mediation procedures;

(B) The differences between mediation and other forms of conflict resolution, including therapy and counseling

(C) The circumstances under which the mediator may meet alone with either of the parties or with any other person;

(D) The confidentiality provision as provided for by Title 5, Section 854 of the Virgin Islands Code;

(E) The duties and responsibilities of the mediator and the parties;

(F) The fact that any agreement reached must be reached by mutual consent of the parties;

(G) The information necessary for defining the disputed issues.

(2) The mediator has a duty to be impartial, and to advise all parties of any circumstances bearing on the mediator's possible bias, prejudice or lack of impartiality. Any person selected as a mediator shall be disqualified for bias, prejudice or impartiality as provided for by Title 28, U.S.C. Section 144 and shall disqualify him/herself in any action in which he/she would be required under Title 28, U.S.C. Section 455 to disqualify him/herself if he/she were a judge or Magistrate Judge.

(3) A mediator appointed by the court pursuant to these rules shall have judicial immunity in the same manner and to the same extent as a judge.

(4) *Disqualification of a Mediator.* Any party may move the court to enter an order disqualifying a mediator for good cause. Mediators have a duty to disclose any fact bearing on their qualifications which would be grounds for disqualification. If the court rules that a mediator is

disqualified from hearing a case, an order shall be entered setting forth the name of a qualified replacement. Nothing in this provision shall preclude mediators from disqualifying themselves or refusing any assignment. The time for mediation shall be tolled during any periods in which a motion to disqualify is pending.

(d)(1) *Completion of Mediation.* Mediation shall be completed within forty-five (45) days of the first mediation conference unless extended by order of the court or by stipulation of the parties, but in any event the process shall not exceed ninety (90) calendar days.

(2) *Exclusions from Mediation.* The following actions shall not be referred to mediation:

- (A) Criminal actions;
- (B) Appeals from rulings of administrative agencies;
- (C) Forfeitures of seized property;
- (D) Habeas corpus and extraordinary writ;
- (E) Declaratory relief;
- (F) Any case assigned by the court to a multidistrict tribunal;
- (G) Any litigation expedited by statute or rule; or,
- (H) Other matters as may be specified by order of a judge in the district.

(3) *Discovery.* Discovery may continue throughout mediation. Such discovery may be delayed or deferred upon agreement of the parties or by order of the court.

(4) *Disclosure Privilege.* Each party involved in a court-ordered mediation conference has a privilege to refuse to disclose, and to prevent any person present at the proceeding from disclosing communications made during such proceeding.

(5) *Inadmissibility of Mediation Proceedings.* Any or all communications, written or oral, made in the course of a mediation proceeding, other than an executed settlement agreement, shall be inadmissible as evidence in any subsequent legal proceeding, unless all parties agree otherwise.

(e)(1) *Interim or Emergency Relief.* A mediator may apply to the court for interim or emergency relief at any time, at the initiation of the mediator upon consultation with the parties, or at the parties' request. Mediation shall continue while such a motion is pending absent a contrary order of the court or a decision of the mediator to adjourn pending disposition of the motion. Time for completing mediation shall be tolled during any periods where mediation is interrupted pending resolution of such a motion.

(2) *Sanctions for Failure to Appear* If a party, without good cause, fails to appear at a duly

noticed mediation conference or fails to participate in the mediation in good faith, the court shall impose sanctions, including an award of mediator and attorney fees and other costs against the party failing to appear or found not to have mediated in good faith. If, in the opinion of the mediator, a party has not participated in the mediation in good faith, and notwithstanding any other provisions of this rule, the mediator shall notify the referring judge in writing who shall make such further proceedings as appropriate to resolve the issue. If a party to mediation is a public entity, that party shall be deemed to appear at a mediation conference by the physical presence of a representative with full authority to negotiate on behalf of the entity and to recommend settlement to the appropriate decision making body of the entity. Otherwise, unless stipulated by the parties, a party is deemed to appear at a mediation conference if the following persons are physically present:

(A) The party or its representative having full authority to settle without further consultation; and,

(B) A representative of the insurance carrier for any insured party who is not such carrier's outside counsel and who has full authority to settle without further consultation.

(3) *Adjournments.* The mediator may adjourn the mediation conference at any time and may set a date and a time for reconvening the adjourned conference, provided the mediation conference takes place within fifteen (15) days of the original date set for the conference. Any continuance beyond this fifteen- (15-) day period must be approved by the presiding judge to whom the case is assigned. No further notification is required for parties present at the adjourned conference.

(4) *Role of Counsel.* Mediation will proceed in the absence of counsel. unless otherwise ordered by the court. Counsel shall only be permitted to communicate privately with their clients, when the parties are not attending scheduled mediation proceedings.

(5) *Communication with Parties.* The mediator may meet and consult. with the parties or their counsel, on any issue pertaining to the subject matter of the mediation. Should the mediator wish to discuss a matter with the parties or their counsel, the mediator must inform all parties to the mediation of the location and subject matter of such meeting. The mediator can consult with any party or their counsel, only upon agreement of all parties. The mediator shall keep a written record of any and all meetings conducted with the parties or their counsel, and such record shall be made available to the parties.

(6) *Appointment of the Mediator.*

(A) Within ten (10) days of the order of referral, the parties may agree upon a stipulation with the court designating:

(I) A certified mediator; or

(ii) A mediator who does not meet the certification requirements of the rules but who, in the opinion of the parties and upon review by the presiding judge, is otherwise qualified by training or experience to mediate all or some of the issues in the particular case.

(B) If the parties cannot agree upon a mediator within ten (10) days of the order of referral, the plaintiff or petitioner shall so notify the court within ten (10) days of the expiration of the period to agree on a mediator, and the court shall appoint a certified mediator selected by rotation or by such other procedures as may be adopted by administrative order of the court.

(7) *Compensation of the Mediator.* The mediator shall be compensated by the parties. The presiding judge may determine the reasonableness of the fees charged by the mediator. In the absence of a written agreement providing for the mediator's compensation, the mediator shall be compensated at the hourly rate set by the presiding judge in the referral order. Each party shall pay one-half or such other proportionate share of the total charges of the mediator as may be agreed upon, unless the mediator and/or the court determines that one party has not mediated in good faith.

(f)(1) *No Agreement.* If the parties do not reach any agreement as to any matter as a result of mediation, or if the mediator determines that no settlement is likely to result from the mediation, the mediator shall report the lack of an agreement to the court without comment or recommendation. With the consent of the parties, the mediator's report may also identify any pending motions or outstanding legal issues, discovery process, or other action by any party which, if resolved or completed, would facilitate the possibility of a settlement.

(2) *Agreement.* If an agreement is reached, it shall be reduced to writing and signed by the parties and their counsel, if any. The agreement shall be filed when required by law or with the parties' consent. If the agreement is not filed, a joint stipulation of dismissal shall be filed. By stipulation of the parties, the agreement may be electronically or stenographically recorded. In such event, the transcript may be filed with the court.

(3) *Imposition of Sanctions.* In the event of any breach or failure to perform under the agreement, the court upon motion may impose sanctions, including costs, attorney fees, or other appropriate remedies including entry of judgment on the agreement.

(g)(l) *Certification of Mediators.* For certification, a mediator:

(A) Must complete a minimum of twenty (20) hours in a training program approved by the District Court; and,

(B) Must observe a minimum of four district or other mediation conferences, conducted by a certified mediator and conduct four district court mediation conferences under the supervision and observation of a court certified mediator;

(C) Standing: A mediator must also meet one of the following minimal requirements:

(I) The mediator may be a member in good standing of the Virgin Islands Bar with at least five years of Virgin Islands practice, and be an active member of the Virgin Islands Bar within one year of application for certification; or,

(ii) Paragraph (I) notwithstanding, the chief judge, upon written request setting forth reasonable and sufficient grounds, may certify as a District court mediator a retired judge who was a member of the bar in the state or Territory in which the judge presided. The judge must have been a member in good standing of the bar of another state for at least five years immediately preceding the year certification is sought and must meet the training requirements of subsection (g)(1)(A); or,

(iii) The mediator may be the holder of a master's degree and be a member in good standing in his or her professional field with at least five (5) years of practice in the Virgin Islands; and,

(D) Notwithstanding the foregoing procedures which are the preferred method of certification, the court may, in the absence of an available pool of certified mediators, appoint as a mediator a qualified person acceptable to the court and the parties. Also, a person certified as a mediator by the American Arbitration Association, or any other national organization approved by the District Court shall be deemed to qualify under this section as a District Court Mediator.

Adopted July 20, 1992, off. July 21, 1992; amended Nov. 17, 1993, off. Nov. 17, 1993; Feb. 8, 1996, off. Feb. 19, 1996.

CASE NOTES

Disqualification

An attorney who was formerly the mediator in the identical litigation must be disqualified from later representing a party to that litigation, as it is not unreasonable to assume that, in light of the nature and purpose of mediation proceedings, confidential information is disclosed by the parties. Further, disqualification should be imputed to the others members of the mediator/attorney's firm. McKenzie

Constr. v. St. Croix Storage Corp., D.C.VI. 1997. 37 VI. 105, 961 F. Supp. 857.

Rule 16. PRETRIAL CONFERENCES; SCHEDULING; MANAGEMENT

Rule 16.1.(c) JOINT FINAL PRETRIAL ORDER.

(1) *Procedure.* The proposed Joint Final Pretrial Order shall be prepared through cooperation of counsel within the deadlines and in accordance with instructions given by the court. After each counsel has submitted the respective portions of the proposed pretrial order to other counsel,

plaintiff's counsel shall convene a conference, in person or by telephone, to attempt to reconcile any matters on which there is a disagreement. After diligent efforts to resolve such disagreements, all areas of agreement or disagreement shall be noted in the proposed Joint Final Pretrial Order. The proposed Order shall be a single document reflecting efforts of all counsel, signed by all counsel of record, and then submitted by plaintiff's counsel (original plus one copy for each attorney or unrepresented litigant) to the Magistrate Judge for review and entry. Once entered, the Joint Final Pretrial Order, including lists of witnesses and exhibits, shall not be amended except to prevent manifest injustice, see Rule 16(e) of the Civil Rules. The court will enforce the provisions and requirements of the Joint Final Pretrial Order by sanctions against counsel or the parties, as appropriate under Rule 37 of the Civil Rules.

(2) *Format.* In all civil cases, unless otherwise ordered by the court, the Joint Final Pretrial Order shall be prepared and submitted in accordance with the format attached hereto as Appendix 1.

Rule 37. FAILURE TO MAKE OR COOPERATE IN DISCOVERY: SANCTIONS

Rule 37.1. Informal Conference to Settle Discovery Disputes --Motions Generally

No motion relative to discovery shall be accepted for filing unless accompanied by a certificate of counsel for the moving party, stating that counsel have met and conferred for purposes of amicably resolving issues and stating why they are unable to agree or stating that opposing counsel has refused to so meet and confer after reasonable notice. Counsel for the moving party shall arrange the conference. If the court finds that opposing counsel has willfully refused to meet and confer or, having met, willfully refused or failed to confer in good faith, the court may impose such sanctions as it deems proper.

Additionally, counsel are urged to confer with opposing counsel on *all motions* prior to filing thereof. --Adopted July 20, 1992, off. July 21, 1992.

Rule 72. MAGISTRATE JUDGES AND PRETRIAL MATTERS

Rule 72.1. Magistrate Judges

(4) *Civil Case Management.*

(B) Conduct pretrial conferences as set forth in Rule 16 and 26(f) of the Civil Rules, which include but are not limited to scheduling, settlement, discovery, preliminary and final pretrial conferences, and entry of appropriate orders.

